

June 24, 2009

DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY

Appeal

Name of Petitioner: Paul Linkes

Date of Filing: June 5, 2009

Case Number: TFA-0315

On June 5, 2009, Paul Linkes (Appellant) filed an Appeal from a determination issued to him on April 27, 2009, by the Oak Ridge Office (Oak Ridge) of the Department of Energy (DOE). In that determination, Oak Ridge responded to a request for information the Appellant filed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the Department of Energy in 10 C.F.R. Part 1004. In its determination, Oak Ridge identified and released documents responsive to the Appellant's request. The Appellant challenged the adequacy of Oak Ridge's search for documents. This appeal, if granted, would require Oak Ridge to conduct a further search for responsive documents.

I. Background

On February 26, 2009, the Appellant requested copies of medical, personnel, radiation exposure, and beryllium records for Ashley Dalton Linkes, deceased. Request dated February 26, 2009, from Appellant to Oak Ridge. On April 27, 2009, Oak Ridge released the documents it located to the Appellant. Oak Ridge also indicated in its determination letter that some documents may be located at the National Nuclear Security Administration Service Center (NNSA/SC), because Mr. Linkes worked at Y-12, now an NNSA facility. Determination Letter dated April 27, 2009, from Elizabeth Dillon, Authorizing Official, Oak Ridge, to Appellant. On June 5, 2009, the Appellant appealed, asking for help in locating the documents he is requesting. Appeal Letter received June 5, 2009, from Appellant to Director, Office of Hearings and Appeals (OHA), DOE.

II. Analysis

In responding to a request for information filed under the FOIA, it is well established that an agency must "conduct a search reasonably calculated to uncover all relevant documents." *Truitt v. Department of State*, 897 F.2d 540, 542 (D.C. Cir. 1990). "The standard

of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials.” *Miller v. Department of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985); *accord Truitt*, 897 F.2d at 542. We have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., Glen Bowers*, Case No. TFA-0138 (2006); *Doris M. Harthun*, Case No. TFA-0015 (2003).^{1/}

We contacted Oak Ridge to determine what type of search was conducted. Oak Ridge indicated that it requested Oak Ridge Associated Universities (ORAU) to search its files for beryllium, radiation exposure, and medical records, and a work history for Mr. Linkes. E-mail dated June 10, 2009, from Amy Rothrock, Oak Ridge, to Janet R. H. Fishman, OHA, DOE (June 10 E-mail). Oak Ridge continued that ORAU maintains centralized personnel, medical, beryllium, and radiation exposure records on thousands of individuals who may have been participants in various epidemiology research projects. *Id.* The request was also sent to the K-25 site, the Oak Ridge National Laboratory (ORNL), and the DOE Records Holding Area. *Id.* A personnel security clearance assurance index card file located at the DOE Records Holding Area indicated that Mr. Linkes worked as a RUST Engineering construction contractor and also worked for Union Carbide^{2/} at the Y-12 facility. *Id.* A work history report received from ORAU and a printout from a DOE historical employment database maintained in the FOIA office indicated that Mr. Linkes also worked at K-25 as a guard. *Id.* As a result of this information, the request for any records maintained at Y-12 was sent to the NNSA/SC in Albuquerque, New Mexico, because RUST construction contractor records, Y-12 contractor records, and some records of former K-25 employees are now under NNSA jurisdiction.^{3/} *Id.*

The searches were performed using electronic finding aids and electronic document storage systems for actual records in electronic form. *Id.* Paper files were searched by hand using paper or electronic indices of the contents of those paper files from ORNL. *Id.* The search conducted at Oak Ridge resulted in a few pages of medical files, a few pages of inactive payroll records from K-25, a few pages of employment and personnel security records from the DOE Records Holding Area, and a work history report from ORAU. No beryllium or radiation exposure records were located. Oak Ridge indicated that these

^{1/} All OHA FOIA decisions issued after November 19, 1996, may be accessed at <http://www.oha.doe.gov/foia1.asp>.

^{2/} Carbide and Carbon Chemicals Corporation were the contractor at Oak Ridge beginning in 1945. Carbide became Union Carbide in 1977. Email dated June 17, 2009, from Amy Rothrock, Oak Ridge, to Janet R. H. Fishman, OHA.

^{3/} NNSA/SC will respond directly to the Appellant when its search is concluded. E-Mail dated June 17, 2009, from Amy Rothrock, Oak Ridge, to Janet R. H. Fishman, OHA.

records may be held at NNSA. *Id.* After the receipt of a copy of this Appeal, Oak Ridge indicated that additional payroll records from K-25 were located and it will provide those records in a supplemental response to the Appellant. *Id.*

Oak Ridge searched in the areas most likely to have the requested information. Further, a person with knowledge of the subject matter conducted the search. Oak Ridge forwarded the request to another office, NNSA/SC, because it is possible that it might have possession of responsive information. NNSA/SC will be responding to the Appellant directly with the results of its search. We believe the search that Oak Ridge conducted was reasonably calculated to uncover the requested information in those offices.

III. Conclusion

The search conducted by Oak Ridge was reasonably calculated to uncover all documents responsive to the Appellant's request. Therefore, we will deny the Appeal.

It Is Therefore Ordered That:

- (1) The Appeal filed by Paul Linkes, Case No. TFA-0315, is hereby denied.
- (2) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review. Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

Poli A. Marmolejos
Director
Office of Hearings and Appeals

Date: June 24, 2009